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*Of Attorney for Defendants*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**RADAGAST PET FOOD, INC.**, an  
Oregon corporation,

Plaintiff,

v.

**CENTINELA FEED, INC.**, a  
California corporation, and **THE**  
**LOTUS PET FOOD, INC.**, a  
California corporation,

Defendants.

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Case No. 3:19-cv-01467-JR

Defendant's Centinela Feed, Inc.'s  
**ANSWER AND AFFIRMATIVE DEFENSES  
TO PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

Defendant Centinela Feed, Inc. ("Defendant") submits the following answer and affirmative defenses to Plaintiff Radagast Pet Food, Inc.'s First Amended Complaint as follows:

**STATEMENT OF THE CASE**

1. In response to paragraph 1 of the First Amended Complaint, Defendant lacks sufficient information to either affirm or deny the allegation, and therefore deny the allegation.

**PARTIES**

2. In response to paragraph 2 of the First Amended Complaint, Defendant lacks sufficient information to either affirm or deny the allegation, and therefore deny the allegation.

3. In response to paragraph 3 of the First Amended Complaint, Defendant admits the allegations contained therein.

4. In response to paragraph 4 of the First Amended Complaint, Defendant lacks sufficient information to either affirm or deny the allegation, and therefore denies the same.

#### **JURISDICTION AND VENUE**

5. In response to paragraph 5 and 6 of the First Amended Complaint, Defendant admits the allegations contained therein.

6. In response to paragraph 7 of the First Amended Complaint, Defendant lacks sufficient information to either affirm or deny the allegation, and therefore denies the same.

7. In response to paragraph 8 of the First Amended Complaint, Defendant admits the allegations contained therein.

#### **FACTS COMMON TO ALL CLAIMS**

8. In response to paragraph 9 of the First Amended Complaint, Defendant lacks sufficient information to either affirm or deny the allegations, and therefore deny the allegations.

9. In response to paragraph 10 of the First Amended Complaint, Defendant admits the allegations.

10. In response to paragraph 11 of the First Amended Complaint, Defendant lacks sufficient information to either affirm or deny the allegation, and therefore denies the allegation.

11. In response to paragraph 12 of the First Amended Complaint, Defendant lacks sufficient information to either affirm or deny the allegation as it implies a legal conclusion, and therefore denies the allegation.

12. In response to paragraph 13 of the First Amended Complaint, Defendant admits the allegations.

13. In response to paragraphs 14 through 39 of the First Amended Complaint, Defendant lacks sufficient information to either affirm or deny the allegation and/or they infer multiple legal conclusions, and therefore denies the same.

## **CLAIM FOR RELIEF**

### **(Breach of Contract – Written)**

14. In response to paragraph 40 of the First Amended Complaint, Defendant realleges and incorporates by reference the foregoing paragraphs as though fully set forth herein.

15. In response to paragraphs 41 through 45 of the First Amended Complaint, Defendant denies the allegations.

## **AFFIRMATIVE DEFENSES**

Without waiving the foregoing or assuming the burden of proof with respect to its affirmative defenses, Defendant alleges the following affirmative defenses:

### **FIRST AFFIRMATIVE DEFENSE**

#### **(Failure to State a Claim)**

1. The First Amended Complaint fails to state a claim against Defendant for which relief can be granted.

### **SECOND AFFIRMATIVE DEFENSE**

#### **(Consent)**

2. Plaintiff consented to the disclosure of the very information they claim is confidential, and therefore cannot retroactively claim that the use of any disclosed information, if any, is a violation deserving an award of damages.

### **THIRD AFFIRMATIVE DEFENSE**

#### **(Ratification)**

3. Plaintiff ratified the disclosure of any claimed confidential information, and therefore cannot retroactively claim that the use of any disclosed information, if any, is a violation deserving an award of damages.

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#### **FOURTH AFFIRMATIVE DEFENSE**

##### **(No Actual Injury)**

4. At the time of disclosing the alleged confidential information, Plaintiff was out of business. Even in the event the allegations set forth in Plaintiff's First Amended Complaint are true, which Defendant strongly disagrees, Plaintiff experienced no actual injury or harm deserving of an award of damages.

5. Furthermore, Nominal Damages cannot be sought under a breach of contract claim as breach of contract requires actual damages to be proven. No actual damages are alleged or can be proven.

#### **FIFTH AFFIRMATIVE DEFENSE**

##### **(Speculative and Nominal Damages)**

6. Plaintiff is seeking to recover damages that are completely speculative in nature, entirely nonexistent, or not permitted under Oregon law. Oregon law does not permit a party bringing a claim for breach of contract to seek nominal damages as proof of actual damages. Therefore, this case should be dismissed with prejudice, declaring Defendant as the prevailing party.

#### **SIXTH AFFIRMATIVE DEFENSE**

##### **(Complete Performance)**

7. Defendant is discharged from all liability due to fully performing and discharging all duties.

#### **SEVENTH AFFIRMATIVE DEFENSE**

##### **(Prevailing Party)**

8. Defendant has defended this case for nearly one year which has resulted in the Plaintiff removing their claim for \$150,000 and subsequently is now seeking nominal damages after the filing of the Amended Complaint. As such, the Defendant is the prevailing party in this action and under the NDA, and requests a return of its attorney fees expended in this matter.

9. Furthermore, Defendant has previously consented to inspection of all requested electronic storage devices, and has satisfied the remaining requests set forth in Paragraph A of Plaintiff's Prayer for Relief, making any subsequent litigation, expenses, and attorney fees incurred by either party frivolous and unwarranted.

**RESERVATION OF RIGHTS TO ALLEGE OTHER AFFIRMATIVE DEFENSES**

Defendant reserves the right to assert additional defenses that are supported by information or facts obtained through discovery or other means during this case and expressly reserves the right to amend this response to assert such additional affirmative defenses.

WHEREFORE, Defendant Centinela Feed, Inc. prays as follows:

1. That Plaintiff's First Amended Complaint be dismissed with prejudice, and that judgment be entered in favor of Defendant.

2. That Defendant be awarded its reasonable attorney fees pursuant to the terms of the agreement at issue, at equity, and as the prevailing party;

3. That Defendant be awarded its costs (including expert fees) and disbursements herein; and

4. For such other and further relief as the Court deems just and proper.

DATED this 20th day of November, 2020.

BITTNER & HAHS, P.C.

By: s/Eric S. Postma  
Eric S. Postma, OSB #993478  
Nathan B. Pogue, OSB #164611  
*Of Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of November, 2020, I served the foregoing  
**DEFENDANT CENTINELA FEED, INC.'S ANSWER AND AFFIRMATIVE DEFENSES**  
**TO PLAINTIFF'S FIRST AMENDED COMPLAINT** on the following individuals:

Laura Salerno Owens, OSB #076230  
Adam M. Starr, OSB #125393  
Molly K. Honoré, OSB #125250  
Markowitz Herbold PC  
1455 SW Broadway, Suite 1900  
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*Of Attorneys for Plaintiff*

☐ mailing to said person a complete and correct copy thereof, contained in a sealed envelope, addressed as set forth above and deposited in the United States mail in Lake Oswego, Oregon, with postage thereon prepaid, on said day.

☒ emailing to said person at the email address set forth above, a complete and correct copy thereof, on said day.

☐ hand delivering to said attorneys a complete and correct copy thereof, contained in a sealed envelope, at the address set forth above, on said day, and leaving it with the attorneys' clerk, or person apparently in charge of the office, or in a conspicuous place therein if no one was apparently in charge of the office.

DATED this 20th day of November, 2020.

BITTNER & HAHS, P.C.

By: S/Eric S. Postma

Eric S. Postma, OSB #993478

Nathan B. Pogue, OSB #164611

*Of Attorneys for Defendants*